

January 22, 2007

Mr. Jeffrey Bringle
3465 Virginia Street
Columbus, IN 47203

Re: Formal Complaint 06-FC-220; Alleged Violation of the Access to Public Records Act by the Bartholomew County Surveyor

Dear Mr. Bringle:

This is in response to your formal complaint alleging that Bartholomew County Surveyor ("Surveyor") violated the Access to Public Records Act by failing to produce an index of calls and by asking you to sign an acknowledgement that you had received a response from the Surveyor. I find that the Surveyor did not violate the Access to Public Records Act.

BACKGROUND

In the formal complaint that you filed on December 21, 2006, you refer to the request that you made of the Surveyor on November 21, 2006. In that request, you asked for "the index and record of all phone calls concerning Sloan Branch, to include concerned callers' phone number, the date and summary of the substance of the call, from the year of 1984 to present." In addition, you sought "all documentation that would prove or tend to prove jurisdiction relied upon by the Bartholomew County Drainage Board and Surveyor for Sloan Branch."

You state that you received a response the next day, in writing. The response stated in relevant part that the Surveyor has no record or index in relation to your first request. You state that you "find this hard to believe." Prior to this request, on September 18, 2006, you visited the Surveyor, and asked Tom Finke about such an index. You claim that he gave you several names of some recent contacts' names.

In addition to the allegation that you have been denied a record, you also complain that the Surveyor asks that you sign an acknowledgement that you have received the response of the Surveyor.

I sent a copy of your complaint to the Surveyor. I enclose a copy of the response, submitted by Mr. J. Grant Tucker on behalf of the Surveyor. Mr. Finke told you that the Surveyor does not have an index or record of phone calls concerning Sloan Branch. In discussing the matter with Mr. Finke, Mr. Finke told Mr. Tucker that the file that you refer to was simply a job file for the maintenance project for the Sloan Branch Legal Drain. The file contained a list of all land owners in the Sloan Branch Legal Drain Water Shed. However, no "index" or listing of persons who had called the Surveyor's office concerning the drain exists.

Mr. Tucker denies that you were required to sign any acknowledgement of receipt prior to receiving the information that you had requested.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). “Public record” is any material that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). If the requested record is not among those public records of the agency, the agency is not required to compile or create a new record to satisfy a request.

Taking as true the Surveyor’s assertion that it maintains no phone call index on the Sloan Branch, I cannot determine that the Surveyor violated the Access to Public Records Act. The Surveyor’s description of the conversation you had with Mr. Finke appears to answer your allegation that the Surveyor must have the index based on your conversation in September.

In a previous opinion of this office resulting from a complaint that you filed against the Bartholomew County Drainage Board, I found that the Board could not require that a person sign an acknowledgement as a precondition to receiving records. *See Opinion of the Public Access Counselor 06-FC-210*. However, in that opinion, I noted that no provision in the APRA would prevent an agency from requesting that a person sign an acknowledgement. A public agency may request that a person identify himself, give an address, or sign an acknowledgement, so long as these requests are not conditions to receiving or requesting records, unless applicable law allows a public agency to impose a condition.

Because you have not alleged that the Surveyor demanded that you sign the acknowledgement, but only asked that you do so, I do not find any violation of the APRA from that request.

CONCLUSION

For the foregoing reasons, I find that the Bartholomew County Surveyor did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: J. Grant Tucker